

[4th February 1925]

* The hon. Mr. R. A. GRAHAM :—“ It is an amount that was placed in reserve with the Government for certain specific purposes last year. It was mainly for the purpose of repairing damages by cyclone as we could not estimate the actual sum that would be needed at that time. It has not all been used for that purpose.”

* Diwan Bahadur M. KRISHNAN NAYAR :—“ What will be the amount unspent ? ”

* The hon. Mr. R. A. GRAHAM :—“ There is now practically nothing left.”

* Diwan Bahadur M. KRISHNAN NAYAR :—“ After this grant is made ? ”

* The hon. Mr. R. A. GRAHAM :—“ Yes, including the amount utilized for this purpose.”

* Diwan Bahadur M. KRISHNAN NAYAR :—“ May I know whether there will be any sum left after this grant is made ? ”

* The hon. Sir ARTHUR KNAPP :—“ There will be a few thousand rupees after this grant is made.”

The motion was put to the House and carried ; the grant was made.

V

THE MADRAS CIVIL COURTS BILL—cont.

* The hon. Mr. C. P. RAMASWAMI AYYAR :—“ Mr. President, Sir, after what took place yesterday in the Council, and after the speeches that were made, I have had the advantage of consulting a few hon. Members of this House and of considering the position. I take it that the main objection that is formulated in regard to the consolidating and amending Bill is that by adopting that procedure I am, so to say, committing this House to a new measure of a particular shape or texture and that, though not directly, yet indirectly I am making it more difficult for the House later on to decide the questions that are sought to be raised and discussed with reference to section 7 of the original Act, viz., the powers of the High Court in respect of appointments. Let me at once repeat the remark with which I prefaced my observations, viz., that my sole object in coming forward before this Council is for the purpose of enabling provisions to be made such as have been made or sought to be made in clauses 4, 5 and 14 of the Bill, clause 4 enabling the posting of additional subordinate judges and munsifs to courts where there may arise the necessity to post such judges without the correlative or corresponding necessity of establishing temporary courts there, thus making considerable saving in the matter of building rent, establishment and so forth. The figures that have been worked out show that so far as this year is concerned, there will be a saving of Rs. 1,15,000. The economy will be on a progressive scale as we go on and as the system is further applied. It seems to me that we may as well face that question. I am perfectly willing, should the general sense of the House desire that particular method to be adopted, to go forward with the Bill for the purpose of achieving these two or three specific ends, viz., of enabling Government firstly to appoint additional judges to subordinate courts and district munsifs' courts. Clause 5 carries out this idea. Secondly clause 14 deals with the question of giving small cause powers to the courts. I am willing to confine myself to three clauses, viz., clauses 4, 5 and 14. If we are thus to deal with the question, and if that meets with the general approval of

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the House, I can at once proceed to do so and at the same time deal with the technicalities which may arise. It may be put to me that the Select Committee has considered the whole Bill and has come out with a consolidating enactment and that I cannot make it an amending enactment. It seems to me that this is only a matter of technicalities. If the House is of opinion that it does not want to discuss the question of the High Court and its jurisdiction and its powers here and now, the easiest way of dealing with it is to treat this as an amending Bill and not a consolidating and amending Bill and deal with each appropriate section by giving up those other sections which have been dealt with in the Select Committee. I do not want to dilate upon the procedure. Thus in effect we may deal with clauses 4, 5 and 14 which embrace the points on which I desire to concentrate. I am putting forward that proposition and making that plea as I do not want it to be said that I am forcing the hands of the Council on a larger question of policy, directly or indirectly or by implication. If that course is accepted of dealing with these particular clauses with the amendments that have been suggested in regard to them, we may finish the Bill before the day is out.

“If, on the other hand, the House would rather have the whole Bill gone through, it is for the Council to decide. So far as I am concerned, speaking on behalf of the Government, I am perfectly willing to deal with the matter and apply the remedy just to the extent to which the remedy is actually called for. Moreover, the reason why a consolidating form was adopted was this. There have been a series of amendments to this Act from 1873 onwards, and now that there is an opportunity, it was thought that we might consolidate all these together and have a new Act so to say beginning afresh. But if that does not commend itself to the House, the other course is open to them. I would therefore, Sir, with your leave, invite discussion so that we might arrive at a decision. It is that aspect that I want to put forward before the House.”

Mr. A. RAMASWAMI MUDALIYAR:—“Mr. President, Sir, the hon. the Law Member was good enough to suggest to me that he would invite discussion on this particular matter just a short time back. Now, Sir, let me at once explain the difficulties that I feel in this matter. As I said yesterday, as it was a consolidating and amending measure, we thought it our duty to press very strongly on the attention of this House particular amendments relating to the divesting of the High Court of its powers with reference to the appointment of district munsifs and the vesting of such powers in the Local Government. The difficulties placed in our way were pointed out to us with reference to the *ultra vires* nature of our amendments. In view of the suggestion made by the hon. the Law Member now, those difficulties may temporarily be got over, that is to say, if this measure is not to be regarded as a consolidating measure and if the amendments are to be restricted to those particular provisions of the Act which are necessary to be amended in view of the conferring of powers on the temporary courts, etc., the other question does not arise. Apart from the question of *ultra vires*, with regard to the powers of High Court over appointments, I would request the Government to state whether they have made up their minds on this question. The hon. the Law Member is aware that the particular question I have referred

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to, namely divesting the power of the appointment of munsifs from the High Court, has been before the House for some years. And certainly it has been in a very acute form before the hon. the Law Member ever since we went into the Select Committee on the Madras Civil Courts Bill. I find that practically every one of the Members has agreed to it, except my Friend, the hon. and learned Member for the University, who goes to the other extreme of divesting the power of the Local Government with reference to the appointment of sub-judges and vesting that power in the High Court. Practically every Member of the Select Committee has been of opinion that some change is required in section 7 of the Madras Civil Courts Act."

Rai Bahadur T. M. NARASIMHACHARIU :—" May I say, Sir, that there are also others who agree with the hon. Member for the University ? "

Mr. C. V. VENKATARAMANA AYYANGAR :—" And some others also, though not on the Select Committee. "

Rao Bahadur A. S. KRISHNA RAO PANTULU :—" May I make a correction, Sir ? I was also on the Select Committee. The point was brought forward, but a ruling was given by the Government of India against it, and it was not considered at all. Though the question was brought up, objection was taken, and it was not considered at all. "

* The hon. Mr. C. P. RAMASWAMI AYYAR :—" The matter came up for decision before me as the Chairman of the Select Committee. I had to give a ruling as to whether the discussion could proceed on the basis of certain amendments, and I gave a particular ruling. And thereupon the very question was raised by some hon. Members as to whether they would be at liberty to put forward their contentions by way of minutes of dissent, and it was agreed, I think, that any substantial suggestions in a sense contrary to that ruling should be and ought to be put forward in minutes of dissent, so that those questions might be raised at the proper time and in the proper manner. "

Mr. A. RAMASWAMI MUDALIYAR :—" I am very thankful to the hon. Members for these interruptions. But the point I was arguing was this : that this particular question of the appointment of district munsifs was specifically and acutely before the hon. the Law Member ever since the Select Committee first met and that he was made aware of the fact that there was some feeling in certain sections of the House that this question ought to be considered. But that question could not be considered in the Select Committee because the Chairman ruled it *ultra vires*, and I am threatened with the same ruling now because the overwhelming legal opinion of the hon. the Advocate-General and the Government of India seems to be against it. But what I want to ask the hon. the Law Member is this. Knowing that there was a strong feeling in this House, or at least in certain sections of it, is the hon. the Law Member in a position to say at present that this Government have considered this question and, if so, what the recommendation which the Government are prepared to make is ? Yesterday, for instance, a suggestion was thrown out that this may be agitated in the Legislative Assembly and that a private Member may introduce a Bill in that House. I want to know—the hon. the Law Member may not give an answer—what are the prospects of a private Member making that demand in the Assembly. The hon. the Law Member knows very much more thoroughly than myself that immediately a Bill of that nature is given notice of in the Assembly, the Government of India are bound to refer it to the Local

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the House, I can at once proceed to do so and at the same time deal with the technicalities which may arise. It may be put to me that the Select Committee has considered the whole Bill and has come out with a consolidating enactment and that I cannot make it an amending enactment. It seems to me that this is only a matter of technicalities. If the House is of opinion that it does not want to discuss the question of the High Court and its jurisdiction and its powers here and now, the easiest way of dealing with it is to treat this as an amending Bill and not a consolidating and amending Bill and deal with each appropriate section by giving up those other sections which have been dealt with in the Select Committee. I do not want to dilate upon the procedure. Thus in effect we may deal with clauses 4, 5 and 14 which embrace the points on which I desire to concentrate. I am putting forward that proposition and making that plea as I do not want it to be said that I am forcing the hands of the Council on a larger question of policy, directly or indirectly or by implication. If that course is accepted of dealing with these particular clauses with the amendments that have been suggested in regard to them, we may finish the Bill before the day is out.

“If, on the other hand, the House would rather have the whole Bill gone through, it is for the Council to decide. So far as I am concerned, speaking on behalf of the Government, I am perfectly willing to deal with the matter and apply the remedy just to the extent to which the remedy is actually called for. Moreover, the reason why a consolidating form was adopted was this. There have been a series of amendments to this Act from 1873 onwards, and now that there is an opportunity, it was thought that we might consolidate all these together and have a new Act so to say beginning afresh. But if that does not commend itself to the House, the other course is open to them. I would therefore, Sir, with your leave, invite discussion so that we might arrive at a decision. It is that aspect that I want to put forward before the House.”

Mr. A. RAMASWAMI MUDALIYAR:—“Mr. President, Sir, the hon. the Law Member was good enough to suggest to me that he would invite discussion on this particular matter just a short time back. Now, Sir, let me at once explain the difficulties that I feel in this matter. As I said yesterday, as it was a consolidating and amending measure, we thought it our duty to press very strongly on the attention of this House particular amendments relating to the divesting of the High Court of its powers with reference to the appointment of district munsifs and the vesting of such powers in the Local Government. The difficulties placed in our way were pointed out to us with reference to the *ultra vires* nature of our amendments. In view of the suggestion made by the hon. the Law Member now, those difficulties may temporarily be got over, that is to say, if this measure is not to be regarded as a consolidating measure and if the amendments are to be restricted to those particular provisions of the Act which are necessary to be amended in view of the conferring of powers on the temporary courts, etc., the other question does not arise. Apart from the question of *ultra vires*, with regard to the powers of High Court over appointments, I would request the Government to state whether they have made up their minds on this question. The hon. the Law Member is aware that the particular question I have referred

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* The hon. Mr. C. P. RAMASWAMI AYYAR :—“ Sir, I want to make my position clear on this matter. It is not a question of my wanting it one way or the other. I have moved that this Bill be taken into consideration, and on that motion discussion was initiated yesterday relating to the larger question, that is, the *ultra vires* character of some of the amendments sought to be moved. I say if objection is to be taken to the consideration of this Bill and my hon. Friend Mr. Natesa Mudaliyar's motion is to block this Bill, the House may decide on the matter if it desires to embark on that discussion. But my task was done when I moved for the consideration of his Bill.”

* Mr. S. SATYAMURTI :—“ I am glad to hear that assurance. Therefore, if this House wants that only certain clauses of the Civil Courts Act should be amended so as to enable Government to appoint additional munsifs or sub-judges without having a separate establishment for each court, they ought to bring in an Amending Bill to the Civil Courts Act. If that is not possible, this Bill should be recommitted to the Select Committee and the Select Committee should give it a different form. But having said that, I part company with the hon. Member from Chingleput. I am surprised that the hon. the Law Member, who I know from my experience in this House in regard to the Irrigation Bill knows how to stick to his guns, should on this occasion have—pardon me if I am wrong—shown the white feather because he is afraid that his Bill may be blocked. He has come forward and suggested . . . ”

* The hon. Mr. C. P. RAMASWAMI AYYAR :—“ Apart from any discussion of feathers white or black (laughter), the position is this. At present the Government of India have ruled particular amendments as *ultra vires*. So, notwithstanding our extreme desire to discuss them here, my humble submission is that we cannot. Of course, the result will depend upon your ruling, Mr. President. It is because I feel (and I can only state my own experience as a lawyer, and my opinion as a lawyer may be taken for what it is worth) that no discussion can take place in this House as the Government of India have ruled it *ultra vires*, that I deprecate needless discussion. ”

* Mr. S. SATYAMURTI :—“ I am only anxious that the hon. the Law Member must follow the logical implications of the statements he has just now made. I cordially agree with him that it is *ultra vires*. Then, why on earth should he want this Bill not to be discussed? It is perfectly open to him to proceed with the Bill. And if you rule that these amendments are out of order, if I were the Law Member, I would press this Bill and have it voted upon. Why the hon. the Law Member should be afraid of the vote of this House I cannot understand. Either he believes in this Bill or does not; there cannot be a third position. And I am surprised that the hon. the Member from Chingleput should have impressed the Government with his strength. I am glad as a Swarajist that the policy of obstruction is accepted by him and has frightened the Government. And I am sure when we are in a majority, we shall be able to threaten the then Law Member and extract concessions from him. Speaking seriously on this matter, I do want every section of this House to consider this matter. Assuming for one moment that we must have communal representation in the services, personally I see the full justice of the communities' desire and anxiety that the public services ought not to be the monopoly of any community therein (hear, hear), and that as far as possible the people of the various

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communities should be represented so that there may be no feeling on one side or the other. But I do ask my friends whether the hon. the Judges of the High Court are not the most competent judges in the matter of appointments to the judiciary. We have on the High Court Bench to-day at least five non-Brahmans, two or three of whom are claimed by the 'Justice' party to have been put in that place by that party. And I do want to suggest therefore that it is far better and safer to leave it to those hon. Judges to protect the interests of these backward communities. Secondly, I am sure the hon. the Law Member is a very competent person, but even he would agree that the Judges who are presiding over Courts every day and listening to the arguments of the practitioners are more competent Judges of this question as to which individual practitioner is competent to occupy a place in the judiciary, than the Government who, after all, can only depend, apart from the knowledge of the Bar possessed by the hon. the Law Member and of the relative capacities of juniors, on the reports of the Judges or the hon. the Advocate-General and others whom he may consult in the matter. So, I suggest in the very interests of the point that my hon. Friend wants to stress, that it is much better to leave it to the High Court.

"The last point I would make is this. We are all talking in these democratic days of the independence of the judiciary from the executive, and is it right that the man who starts on the lowest rung who may one day rise to the highest rung should owe his appointment to the Executive Government? I do want the House to consider whether it is not right that our judiciary must learn to owe their appointment and continuous promotion to the highest judges in the country who view this question from a judicial point of view. I cannot understand this position, namely, that we want not only non-Brahmans but we want non-Brahman cousins, non-Brahman uncles and non-Brahman brothers of the Members of this Council. I cannot understand the political significance of a move to see that we must have the power vested in the Government so that we may use the power in this House to squeeze what we want. If, on the other hand, the claim is a legitimate one, then the move should be for only non-Brahmans being appointed. I personally do not see any harm in putting the power in the hands of the High Court Judges. I am not in the habit of voting with the Government. But, if the question is pressed, I am willing to go into the lobby with them (cheers) in order to convince my Friends here that this communal bias ought not to be allowed to run riot and ought not to be allowed to poison the very springs of public life in this Presidency. It is time that some of our friends learn that there is a limit to these things and that we cannot really poison the springs of justice. On it depends the progress of law and order and these wells ought not to be allowed to be corrupted by the poison of communalism. If the hon. Member in charge allows the amending Bill to be passed, I wish him joy as he will be doing the very best to spoil the prestige of Government and the 'Justice' party will be taught a lesson in obstruction, which is my prime task in the Council."

*Diwan Bahadur M. KRISHNAN NAYAR :—"The suggestion now put before the House is whether this Bill is to be considered at once or whether the Bill is to be recommitted to the Select Committee. It seems to me, Sir, that the better suggestion is that put forward by my hon. Friend, Mr. Ramaswami

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Mudaliyar. It cannot be denied that all these various sections embodied in the Bill and which have been considered by the Select Committee are interdependent. I believe it will practically lead to an awkward situation if we confine our attention only to the three sections referred to by Mr. Ramaswami Mudaliyar. My hon. Friend for the University says that it is illegal. I have not looked at the legal aspect of the question. But, certainly, it is better for the Select Committee to consider the Bill as a whole again, having regard to the considerations put forward by my hon. Friend the Law Member. The Select Committee will be in a position to examine the question with reference to these particular sections and their recommendations will come up again before the House as a whole and the House can then pronounce its opinion. One objection may be raised to this course, viz., that it will involve delay. I do not think it will lead to any delay. If it suits the convenience of the Members of the Select Committee and the hon. the Law Member, the Select Committee may meet immediately some day next week and formulate its recommendations and the Bill can come up again before the Council meets again. I believe that after the presentation of the budget is over, this Bill can be considered or, if necessary, a special day may be allotted for the purpose. The question of delay can be the only reasonable objection to the recommitting of the Bill to the Select Committee. I have great pleasure in supporting the suggestion. As the hon. Member stated, if the suggestion is accepted he can move it in the form of an amendment."

*The hon. Mr. C. P. RAMASWAMI AYYAR:—"I wanted to indicate what my attitude would be on this motion for recommitment."

Mr. C. RAMALINGA REDDI:—"May I rise to a point of order? If you would kindly give your ruling as to whether the amendments tabled by the hon. Member for Chingleput and Madras are in order or not it would probably facilitate discussion. If they are not in order there is no reason why the present Bill should be withdrawn. If they are in order they could be moved and the sense of the House taken. If they are not in order even a recommitment would not do. If they are in order the whole question will have to be gone into."

*The hon. the PRESIDENT:—"I have already agreed to consider the matter to-day. Meanwhile the hon. the Law Member has put forward another proposition before the House and he is entitled to have it considered."

Mr. C. RAMALINGA REDDI:—"My submission to you, Sir, is that your ruling will have the decisive weight in arriving at a conclusion. If they are in order we have to resist even the committing to the Select Committee. We cannot take up these amendments, discuss them and either pass them or reject them according to the wishes of the majority. If they are altogether out of order a different situation arises and the question whether it should go to the Committee or not will have to be taken up. If those amendments are in order it may mean a large number of members would desire to discuss and dispose of them."

*Rao Bahadur T. A. RAMALINGA CHETTIYAR:—"It seems to me that the course suggested by Mr. Ramalinga Reddi is not likely to meet the rules at all. The whole Bill is a consolidating and amending Bill and it is not possible to pick out certain portions and deal with them."

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(f) if the Government have no information with reference to clauses (a) to (e), whether the Government will be pleased to call for the information?

A.—Government have no information. A report has been called for.

Mr. C. V. VENKATARAMANA AYYANGAR :—“ If the report is received, will the Government lay it on the table ? ”

The hon. Mr. C. P. RAMASWAMI AYYAR :—“ Yes.”

Police.

Duties of Circle Inspectors of Police.

* 52 Q.—Rai Bahadur T. M. NARASIMHACHARLU : Will the hon. the Law Member be pleased to state—

(a) what are the duties of the Circle Inspectors of Police in this Presidency; and

(b) whether they do any investigation into crimes as part of their ordinary duties?

A.—(a) & (b) The hon. Member is referred to Orders of the Madras Police, Volume I.

Mr. K. KOTI REDDI :—“ Is there a book called ‘ Orders of the Madras Police ’, or is it the Police Manual ? ”

The hon. Mr. C. P. RAMASWAMI AYYAR :—“ The Madras Police Manual, Volume I, Executive Orders, 1917.”

Finance.

Excess expenditure during the last two years over grants sanctioned.

* 53 Q.—Sriman BISWANATH DAS Mahasayo : Will the hon. the Member for Finance be pleased to state—

(a) the number of cases in which excess expenditure over a grant or grants in each of the years of 1921–22 and 1923–24 was incurred;

(b) if there are any such cases, whether they related to Transferred or Reserved department and also to voted or non-voted items of expenditure; and

(c) whether subsequent sanction of the Legislature was obtained in any or all these cases?

A.—(a) & (b) Excess expenditure over the grants voted by the Legislative Council occurred in six cases in the year 1921–22, five of these relating to Reserved department and one to a Transferred department. As regards non-voted items of expenditure, excesses over the sanctioned allotments occurred under six major heads. Details of the above excesses will be found in the Appropriation Report on the accounts of this Presidency for 1921–22.

The Appropriation Report for the year 1923–24 has not yet been received by Government.

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should be done to further consider the Bill. Under that Standing Order I beg to move my motion. That motion, Sir, if accepted, is likely to take us clear off the dangerous shoals which we now see before us. On the one hand, the hon. the Law Member seems to be anxious that this improvement in the judicial administration, which incidentally, is also likely to effect some retrenchment, should be sanctioned at once. On the other hand, there is the standing question with reference to the appointments in the judiciary which has to be dealt with some day or other. If this motion is accepted now, we would not be delaying the consideration of this Bill for the present for the purpose of considering the bigger question which no doubt has been hanging fire for some time. The only other course possible is what has been suggested by the hon. Member for the University that we should face the question at once. Further, it is not possible to face it except indirectly. That is to say a sort of token motion will have to be made in this House in order to express the feeling in the matter. That will not be satisfactory, because the hon. the Law Member has stated that the question of the amendment of section 7 is not admissible in this House. If that is the case, the question that is sought to be brought here cannot be faced squarely. The only way in which the feeling of this House with reference to this question can be raised is by a motion of the kind, notice of which has been given by the hon. Member, Mr. Natesa Mudaliyar, namely an adjournment of the consideration of the Bill. The result will be delay. The hon. the Law Member himself has not stated his views specifically with reference to the matter that is agitating the minds of members who want to raise the question of patronage to be vested either in the High Court or in the Executive body. At any rate, so far as his intentions in bringing forward this Bill to this House are concerned, I do not think it is one of his intentions that he should raise this question specifically in this House at this moment. I do not believe it. If he had any such intentions, I would be surprised at it. Such being the case, I think my motion will serve the purpose. If it is not accepted, the only course that is open is to raise the question of patronage, as I have said, not by direct voting but by a sort of indirect question. The result of it will be that the consideration of this Bill and the necessary amendments wanted by the hon. the Law Member to be made will be delayed. As regards that question itself, again, Sir, the hon. Member for the University said that there should be no bickering about these communal matters. It is all very well to say that as an abstract, or theoretical matter. Certainly I am free as an idealist to say that it is not very good in the national interest to raise questions about communities and all that. But being situated as we are and knowing the feeling in the country, I do not think a mere statement of abstract theory like that will serve the purpose. So far as patronage of judicial appointments is concerned, there has been any amount of dissatisfaction in the country. No doubt, the Honourable Judges of the High Court ought to be above any kind of reflection in such matters, and I do not think that they consciously do any wrong. We can admit that. But the difficulty is that the surroundings always tell on people (laughter). There are the High Court Judges; they come in contact with certain practitioners and certain people in their offices, and the predilections of these people with whom they come in contact have got an effect on them with the inevitable result that they lead to complaints elsewhere. Well, Sir, it is said the Government have also got surroundings which they cannot shake off (Mr. C. V. Venkataramana

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Ayyangar: 'Hear, hear') and some complaints have been raised in this House with reference to that also. It is quite natural so long as we are human beings to give room for such complaints. Their surroundings will certainly tell upon what they have got to do. No doubt about that. But the only way by which we can meet the situation is probably by the constitution of what has been suggested as a Public Service Commission to make all appointments (Mr. C. Ramalinga Reddi: 'Hear, hear'). That will probably be a satisfactory agency to think of. But to say that we are satisfied with the appointments made by the High Court and that they are in a special degree different from those made by the Government or any other people, I beg to submit, is a thing which people who have considered this matter will not admit.

"Well, Sir, it may be asked: How is the position bettered by vesting the power in the Government rather than in the High Court.
3 p.m. There is one consideration which will make the Government the better body than the High Court. The High Court is not in touch with the people generally except those that appear before them as vakils or who work under them in offices."

* The hon. Mr. C. P. RAMASWAMI AYYAR:—"I am only mentioning it for the consideration of the hon. Member, who is on his legs, that, if as a matter of fact we are not going to discuss the question of the recruitment either by the one or the other body, we need not discuss the question even to the extent to which it has been done?"

* Rao Bahadur T. A. RAMALINGA CHETTIYAR:—"I am only putting the argument before the House and I am only saying that we have to consider all these aspects if we are going to take a division. It is only to avoid any confusion I propose this recommittal to the Select Committee. I am one of those who is anxious to minimise this communal trouble and that trouble will disappear only by agreeing to some sort of proportion by which these appointments would be made and it would then be possible to do away once for all with these difficulties.

"With reference to the High Court, I only want to say it is not merely the opinion of a few people this side or a few people that side, but it is the general feeling—at least among those communities to which we have the honour to belong—that the patronage has not been exercised by the High Court to the satisfaction of us. None of us in the least dream of attributing conscious motives on the part of the High Court Judges; but they are certainly not doing it to our satisfaction. As I said, it is the surroundings that they are placed in that is the cause for these complaints. And I think some satisfactory way should be found in order to remove this dissatisfaction. Sooner or later we will have to meet this question and we will have to solve it. Probably the best way will be to give the powers to the hands of a Public Service Commission. Now, I do not consider it wise on the part of any of us here to raise that question which is quite unnecessary for the purpose for which the hon. the Law Member has now come to this House. It is in view of that I make the motion

'That the Bill be re-committed to the same Select Committee with instructions to consider it as only an amending Bill providing for the incorporation in the old Act of provisions relating to the appointment of more judges or munsifs than one to the same court and giving power to the principal Judge over establishment and the extension of jurisdiction of Small Cause Courts, this report to be made before to-morrow evening.'

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Mr. A. RAMASWAMI MUDALIYAR :—“ Mr. President, I beg to second the motion that has been made by the hon. Member for Coimbatore. In seconding this motion, I wish to make my position perfectly clear. The suggestion has been put forward that the amendment of which I have given notice and which was characterised by the hon. the Law Member as *ultra vires*, might be subjected to the ruling of the President and that thereafter the particular course which we should choose might be taken. My only difficulty is this. Knowing as I do that you, Sir, are not assisted by a standing counsel of your own and that we have to face facts as they are, I wanted to make that position clear that there is a necessity for arming the President with a standing counsel of his own unprejudiced either on the administrative side or on the non-official side. It is that position that has been made clear to the House now. Knowing therefore, as I said, that you are unprotected by an independent standing counsel, and knowing also that you have to depend to a very large extent on the legal advice of the officers of Government, the Advocate-General, a humble member like myself from my position here, is bound to find the fight most unequal when I may be overruled by a ruling from the chair. The Advocate-General has also said that the Government of India is also against the amendment and have considered it *ultra vires*. I was fairly certain taking all the circumstances into consideration, however much eruditely I might argue the case and however much I may try to look into the new High Courts Act, the Letters Patent and all that sort of authorities, finding it will only be a losing battle, I have thought it better to second this motion.

“ Now, Sir, the question as regards how the High Court has been exercising the patronage hitherto, what the circumstances are under which they have been exercised, and how the public feeling in the matter runs, these I have no right to discuss and I have purposely eschewed from my arguments any reference to any communal matters. I put it more on the ground that it was a recommendation very carefully and generously conceded by the Government. But since that speech, certain reflections have been made by the hon. Member for the University and in spite of the hon. the Law Member deprecating our going into this question at this stage I wish to sound my feeble voice of protest, on behalf of those on this side of the House and also on behalf of those on the other side of the House (cries of no, no) against the chary remarks made by my hon. and learned Friend the Member for the University. Sir, the feeling has been given expression to time and again and I may be pardoned for saying that the patronage of the High Court has been, to say the least, improperly exercised. The hon. and learned Member for the University has suggested that if the patronage is vested in the Government then the Government will have to be guided by their own surroundings in the Legislative Council in which case there might be the possibility of the brothers, sons, sons-in-law, cousins, nephews, German cousins, and all the rest of them . . . ”

* Mr. S. SATYAMURTI :—“ Who are German cousins ? ”

Mr. A. RAMASWAMI MUDALIYAR :—“ My Friend over there is a German cousin.”

* Mr. S. SATYAMURTI :—“ Then I too have got a chance ! ”

Mr. A. RAMASWAMI MUDALIYAR :—“ Now, Sir, I want to throw out a friendly challenge to my hon. and learned Friend over there, the Member

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for the University. That is this. Shall we both go through the list of appointments made during the five or six years by the High Court Judges? Or, shall we consent to go through the list of names suggested for the appointments of district munsifs; or shall we have a list framed showing how many of these gentlemen are either cousins, sons-in-law and so forth to Executive Councillors, High Court Judges, retired Judges of the High Court or to those who are at present on the bench of the High Court or to Advocates-General and things like that? This is a challenge fairly and squarely made on the floor of this House and we shall set forth and see how many that have been appointed as district munsifs are the relatives of the Judges of the High Court. My hon. Friend for the University is talking about the future and I am talking about the present. If my hon. Friend will only have the courage to accept the facts and of facing facts instead of trying to talk on airy fairy things on communal representation and if he will see for himself how these gentlemen, after all they are human beings, are exercising the patronage in these matters, then I think we will surely come to a fair solution on what is often talked about as a mere matter of communal representation. Then only will all these provocative speeches that are so freely given expression to"

*Mr. S. SATYAMURTI:—"On a point of personal explanation, Sir, . . ."

Mr. A. RAMASWAMI MUDALIYAR:—"Cannot this point of personal explanation wait till I have finished?"

*Mr. S. SATYAMURTI:—"On a point of personal explanation, I am perfectly willing to accept the challenge thrown by my hon. Friend the Member for Chingleput. I never suggested that men either here or there may not be subject to surrounding influences. But I only said that I believed, and I still maintain that position, that the influence of these surroundings here may be subjected to a large extent to political needs, and that this power might be confined to the High Court and not to the Members occupying the Treasury Benches who are dependent on the votes of the House."

Mr. A. RAMASWAMI MUDALIYAR:—"I am not surprised at the interruption."

*Mr. S. SATYAMURTI:—"The hon. Member is never surprised!"

Mr. A. RAMASWAMI MUDALIYAR:—"The hon. Member said that he agreed with the hon. Member for Coimbatore that men either there or here would be subject to surrounding influences. May I point out to the hon. Member for the University that the surrounding influences here are at any rate those of the representatives of the people while the surrounding influences there are quite different? That at least is a consideration that ought to weigh with my hon. Friend in considering this matter. And then he speaks of influences being subjected to political necessities. I quite agree and I only want to do things straight instead of by indirect, backdoor influences and here the Members are going to be influenced by expressions fairly and freely made and my hon. Friend might bring his eloquence to bear on this House on these matters. I certainly do not want to drag the names of the Judges here though I am certainly not afraid of doing that; for, I can substantiate all that I say by giving figures and quoting chapter and verse. I have no objection to suggesting a committee for scrutinizing

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the appointments made recently by the High Court for district munsifs. I am tabling a resolution and there I shall offer this friendly challenge. . . ."

*Mr. S. SATYAMURTI:—"I am perfectly willing to take up the challenge; only I will then move an amendment to the terms of reference to the Committee that the Committee may also inquire into the number of Presidents and other members of the local bodies that have been appointed by the Ministry from among their friends and relations" (Laughter and applause.)

*The hon. the PRESIDENT:—"I think we have had enough of this exchange of compliments now. If the hon. Member who is going to second the motion will directly second it much of this profitless discussion could be avoided."

Mr. A. RAMASWAMI MUDALIYAR:—"I do not want to mention the names of Judges here and I am anxious not to drag in High Court Judges. In fact my hon. Friend Mr. B. Muniswami Nayudu has specifically said in his dissenting minute that the High Court Judges should be free from all the discussion on the floor of this House. Without wishing to say any further on this matter, I am reluctantly forced to give my acceptance to this motion for recommitment and I second the motion."

3-15 p.m. *The hon. Mr. C. P. RAMASWAMI AYYAR:—"Mr. President, Sir, I intervene in this debate at an early stage in order that my position with reference to this motion and to some of the questions that have been raised or rather adumbrated in the debate may be made absolutely clear. In the first place, I recognize that the necessity has been felt, either on the part of the protagonist of the theory or on the part of its antagonist to raise questions as to the exact mode of exercise of patronage by Judges of the High Court. But I may mention in passing that this was the very reason why at an earlier stage of the discussion I said it was unnecessary and would be futile to consider these matters especially in view of the opinion that has been expressed and which I have also had the honour to hold and still hold, namely, that under the provisions of section 106 of the Government of India Act, the question of divesting the High Court's powers should not be raised in this legislature. Having regard to that matter, I thought we might have steered clear of the discussion of the actual exercise of the powers of patronage by the High Court. But, anyhow, there is one observation with which I desire to close this particular discussion, viz., that the High Court Judges are in no sense represented here excepting perhaps by me. No doubt certain allegations have been made on the floor of this House that there has been a misuse of patronage by some one or other. I take it that there may be other occasions when this exercise of patronage may be tested more thoroughly than can possibly be tested in a debate of an incidental character like this. But I do not desire at this moment, standing as I do as representing the department which I have the honour to administer, to let that allegation pass by uncontradicted. At all events, Government cannot accept that there has been any abuse or misuse of that patronage in any manner whatsoever."

*Rao Bahadur T. A. RAMALINGA CHETTIYAR:—"Only they have not used that patronage to the satisfaction of the people."

*The hon. Mr. C. P. RAMASWAMI AYYAR:—"Without further particulars I do not want to say anything. As the hon. Member, quite incidentally

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I think somewhat playfully, referred to the various Executive Council Members and others having used their influence in securing appointments for their cousins, in order that there may be no misapprehension on that point, I may say that no cousin of mine—I do not believe I have any cousins excepting one who is already in employment—has got any place as a District Munsif after I assumed office.”

Mr. K. KOTI REDDI:—“Are there no German cousins?”

* The hon Mr. C. P. RAMASWAMI AYYAR:—“I am not aware of any German cousins. All this apart, my attitude on this resolution is this. This Bill was intended to secure three objects; firstly, to enlarge the jurisdiction of small cause courts; secondly, to give some powers over ministerial officers to a particular judge of a court where there is more than one judge; thirdly, to take power for appointing a few more judges instead of having a temporary court erected in a place where there is a congestion of work. These were the three objects sought to be attained by this amending Bill. Taking advantage of the Bill we brought in a lot of other formal amendments. As I said in my speech this morning, it is for the House to decide whether they want to codify the Bill or not. This Bill does not purport to do anything more than rectifying some sections in addition to enacting the three additions I have mentioned. I take it that these three motions should alone be dealt with without any attempt at re-codification. That is a matter which I leave entirely to the House and I should be guided by the vote of the House.

“The other question that was raised was somewhat akin to this. In reality, the committal or re-committal to the Select Committee is, I consider, a matter of form. Because in regard to these three amendments or three provisions which are sought to be introduced *de novo*, I do not find any amendment tabled of importance, nor are there any matters of importance that can be raised by way of amendment. Yesterday, when asking for leave to consider this motion, I began to say that this Bill was non-controversial, that there was no point for debate or controversy within the four corners of the Bill. What is now sought to be controverted or raised is something not within the four corners of this Bill, but the implications of section 7 are sought to be agitated. My submission to this House was and continues to be that if this House cannot discuss the right of patronage of the High Court, there is no point in raising it in an incidental manner. If therefore we put it aside and merely consider the questions which we are embarked upon in regard to the actual Bill before the House, I am content. But I do not desire that there should be any undue delay; because, it is conceded, on all hands, that these particular measures which are sought to be introduced are measures of necessary reform and can be carried through without differences of opinion, at once. If they are not passed at once, we cannot enact the measure in the course of this year. And I notice with some gratification that the hon. Member from Coimbatore has given instructions to the select committee to report by to-morrow evening. In these circumstances, I am prepared to abide by the decision of this House on this matter.”

Mr. C. V. VENKATARAMANA AYYANGAR:—“Before voting, I have one doubt to be cleared. It has been said that a ruling on this question as to whether we can introduce amendments as to High Court's powers is not required. Where is the guarantee that, without a ruling from you, if this is

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again sent back to the Select Committee and if it comes back in some form or other, nobody who is either for increasing the powers or diminishing them will bring an amendment? And if it comes what is to be done? It is better that some ruling is given and as a result of that ruling this Bill is sent back to the Select Committee which will only be a formal matter and we can dispose of in a few minutes. Otherwise there is the probability of both parties bringing in amendments even in the Select Committee."

* The hon. Mr. C. P. RAMASWAMI AYYAR :—"Sir, when the Select Committee met on this matter, I ruled as a chairman of that committee, which I shall continue to be if this committee meets, that it is not open to the Select Committee to consider the matter, and I shall have to adhere to that ruling. It is open then or at any other stage for the question to be raised in open Council when the President will give his ruling on the matter. I take it that it should not be brought to a focus in an incidental way or in an indirect way, because it is not fair to initiate the question save by a frontal attack."

* Rao Bahadur C. NATESA MUDALIYAR :—"Mr. President, Sir, I do not think that matters have improved either by the Law Member bringing in only amendments to the existing Bill and not a consolidating Bill nor by the resolution moved by my Friend, Mr. Ramalingam Chettiyar. We cannot but discuss clause 7. We want a ruling whether the amendments to clause 7 can be discussed or not. That clause 7 is a red rag to the various communities. Of the seven dissenting notes to the report of the Select Committee, four have concentrated their attention on clause 7. One of the four proposed an adjournment of the Bill till the Indian Legislature enacted the desired changes. The Chairman of the Select Committee ruled ultra vires the increasing or curtailing the powers of the High Court vested in them according to the Government of India Act of 1919. But the committee lost no opportunity to curtail the power of the Government for annulling appointments made by the High Court."

* The hon. Mr. C. P. RAMASWAMI AYYAR :—"It was pointed out to the committee that for a long time that power had not been exercised. It is no use having powers which are not exercised because it is not likely when the High Court appoints somebody Government will step in and issue a fiat. . . . (laughter) "

* Rao Bahadur C. NATESA MUDALIYAR :—"That might have served as a safety valve when there was any trouble. But if it is said that these rules are very old, even the Government of India Act is old, as old as the East India Company. There are so many things that must be rectified. They are so many clauses simply repeated every time the Act is renewed. Ever since the power of appointing district munsifs was transferred to the High Court, there has been discontent in the land that even in the lowest grades of judicial appointments, various communities are not only not having their due share, but they have almost no share in them. In the pre-Reform days people were grumbling but they had not the power of expression. In the reformed Legislative Council they took the earliest opportunity to express their opinion by tabling a resolution that the power of appointing district munsifs should be transferred to the Government. Various speeches were made in this very Council and all sides of the House agreed that there was a real grievance that various communities were not represented—including speeches made by the present Leader of the Opposition, the then Leader of

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the Opposition, now Leader of the Swarajists—Mr. S. Srinivasa Ayyangar, Mr. A. Ranganatha Mudaliyar, Mr. A. S. Krishna Rao Pantulu, Mr. Siva Rao and everybody agreed there was a grievance among the non-Brahmans against the appointments made by the High Court. And the Leader of the House consented to communicate to the High Court the reports of the discussions of this Council for their guidance. Sir, I am extremely sorry to tell that four solid years have moved on, but the High Court have not moved an inch. They are standing as they were, perhaps making the position in the matter of appointments worse than before.

"Sir, it is all easy to theorise. The conditions of the country are there and are we not to be guided by them? I find that my Friends Mr. Ramalinga Chettiyar and Mr. Ramaswami Mudaliyar, have agreed, for one gentleman moved a resolution and the other gentleman seconded it. I do not know how they agreed. We want that question to be settled first—the question of clause 7, transferring the power of appointment of district munsifs from the High Court to the Government. Of course my friends on both sides were talking about the separation of judicial and executive functions. If after the separation of the judicial and executive functions things are done as they are being done now, save us from such a separation! We do not want that separation at all. Of course I tabled a motion for adjournment. But my feeling now is not to press it; because my friend Mr. Ramalinga Chettiyar and my friend on the other side from the Ministerialists have both brought in a resolution to refer this to the Select Committee. I only want the Law Member to see that the feeling of this Council towards the appointments made by the High Court is communicated to the Judges and see whether they cannot revise their opinion.

"Now, Sir, coming to the Law Member, I am extremely pleased to find that he is so very conciliatory; he is now only half of what he was yesterday (laughter)."

* The hon. Mr. C. P. RAMASWAMI AYYAR:—"I am very likely half of what I was yesterday, but I do not know in what particular."

* Rao Bahadur C. NATESA MUDALIYAR:—"I am extremely thankful that he left the disputed points."

* The hon. Mr. C. P. RAMASWAMI AYYAR:—"The disputed points were left because this Council cannot deal with those points. I am thankful, however, Sir, as I am told that I am only half as objectionable as I was yesterday."

The motion was put and declared carried.

On the motion of Mr. P. Subbarayan a poll was taken.

Ayes.

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| 1. Sir James Simpson. | 11. Diwan Bahadur P. C. Ethirajulu Nayudu. |
| 2. Mr. T. M. Ross. | 12. Mr. S. Raguechandra Ballal. |
| 3. " J. A. Davis. | 13. " J. Kuppuswami. |
| 4. " P. K. S. A. Arumuga Nadar. | 14. " A. Ramaswami Mudaliyar. |
| 5. " N. Devendrudu. | 15. " B. Muniswami Nayudu. |
| 6. Rao Sahib S. Ellappa Chettiyar. | 16. " P. N. Marthandam Pillai. |
| 7. Rao Bahadur A. M. Murugappa Chettiyar. | 17. " C. Muttayya Mudaliyar. |
| 8. Rao Bahadur Cruz Fernandez. | 18. Hony. Lt. Madurai. |
| 9. Rao Sahib P. V. Gopalan. | 19. Mr. C. Ponnuswami Nayudu. |
| 10. Mr. L. C. Guruswami. | 20. " K. S. Ponnuswami Pillai. |
| | 21. " K. Prabhakaran Tampan. |

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Ayes—cont.

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| 22. Rao Bahadur K. Krishnaswami Nayudu. | 38. Mr. Chavadi K. Subrahmanya Pillai. |
| 23. Mr. P. T. Rajan. | 39. Rao Sahib P. V. S. Sunderamurti. |
| 24. " B. Obalesappa. | 40. Diwan Bahadur M. Krishnan Nayar. |
| 25. " P. Sagaram. | 41. " W. Vijayaraghava |
| 26. " J. D. Samuel. | Mudaliyar. |
| 27. " K. Sarabha Reddi. | 42. Rai Bahadur T. M. Narasimhachari. |
| 28. Rao Bahadur C. Natesa Mudaliyar. | 43. Mr. P. M. Narayanaswami Pillai. |
| 29. " T. A. Ramalinga Chettiyar. | 44. Khan Bahadur P. Khalif-ul-lah Sahib. |
| 30. Diwan Bahadur P. Kesava Pillai. | 45. " Haji Abdulla Haji Qasim |
| 31. Dr. P. Subbarayan. | Sahib. |
| 32. Mr. A. Chidambara Nadar. | 46. Mr. Muhammad Ghouse Mian Sahib. |
| 33. " K. Koti Reddi. | 47. " T. N. Bava Ravuttar Muhammad |
| 34. " Muhammad Moosa Sait. | Sahib. |
| 35. " K. Sarvarayudu. | 48. Janab Muhammad Qadir Mubi-ud-din |
| 36. " K. Sitarama Reddi. | Sahib. |
| 37. " R. Srinivasan. | 49. Munshi Abdul Wahab Sahib. |

Noes.

Mr. C. V. Venkataramana Ayyangar.

Neutral.

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| 1. The hon. Sir Arthur Knapp. | 20. Mr. K. Uppi Sahib. |
| 2. " Mr. C. P. Ramaswami Ayyar. | 21. " P. C. Venkatapati Raju. |
| 3. " the Raja of Panagal. | 22. " A. Ranganatha Mudaliyar. |
| 4. " Rao Bahadur Sir A. P. Patro. | 23. " S. Satyamurti. |
| 5. " Diwan Bahadur T. N. Sivag- | 24. " T. Adinarayana Chettiyar. |
| nanam Pillai | 25. " P. Anjaneyulu. |
| 6. " Mr. R. A. Graham. | 26. " M. Gangaraju. |
| 7. " Mr. N. E. Marjoribanks. | 27. " C. Gopala Menon. |
| 8. Mr. R. W. Davies. | 28. " C. Maruthavanam Pillai. |
| 9. " G. F. Paddison. | 29. " S. Muttayya Mudaliyar. |
| 10. " E. W. Legh. | 30. Rao Sahib U. Rama Rao. |
| 11. " P. L. Moore. | 31. Sriman Sasibhushan Rath Mahasayo. |
| 12. " T. R. Venkatarama Sastriyar. | 32. Mr. M. Seetayya. |
| 13. " Abdulla Ghatala Sahib. | 33. " J. A. Saldanha. |
| 14. " S. Arpudiaswami Udayar. | 34. " R. Srinivasa Ayyangar. |
| 15. Rao Sahib T. C. Tangavelu Pillai. | 35. " Sami Venkatachala Chettiyar. |
| 16. Rao Bahadur P. Raman. | 36. " Venkatarama Ayyar alias V. Pantulu |
| 17. " C. V. S. Narasimha Raju. | Ayyar. |
| 18. Mr. C. Ramalinga Reddi. | 37. Rai Bahadur Sir K. Venkatreddi |
| 19. Rao Bahadur A. S. Krishna Rao Pantulu. | Nayudu. |
| | 38. Mr. R. Veerian. |

*Ayes 49.**Noes 1.**Neutral 38.*

The motion was carried.

* The hon. the PRESIDENT:—"The original motion will stand over until the Select Committee presents its report."

Mr. C. V. VENKATARAMANA AYYANGAR:—"Sir, may I ask in this connexion whether a member who has voted in favour of a motion and when the result of the vote is declared in his favour can demand a poll? I remember it has been ruled out of order on a previous occasion."

* The hon. the PRESIDENT:—"I think, so far as I can recollect, that it is open to either side to ask for a poll."

* The hon. Mr. C. P. RAMASWAMI AYYAR:—"May I crave your permission, Sir, having regard to the fact that this motion enjoins on the Select Committee to make its report by to-morrow evening, to announce here that the meeting of the Select Committee will be held immediately after the Council rises?"

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VI

A BILL TO AMEND THE MADRAS DISTRICT MUNICIPALITIES AND LOCAL BOARDS (AMENDMENT) ACT, 1921.

* The hon. the RAJA OF PANAGAL :—" I beg to present the * report of the Select Committee on the Bill to amend the Madras District Municipalities and Local Boards Act, 1921, and move that the Bill as amended by the Select Committee be taken into consideration."

The hon. Rao Bahadur Sir A. P. PATRO :—" I second it."

Clause 1 was put and carried and added to the Bill.

Clause 2 was put and carried and added to the Bill.

Clause 3 was put and carried and added to the Bill.

3-45 p.m. Clauses 4, 5 and 6 were put, passed and added to the Bill.

The preamble was put, passed and added to the Bill.

* The hon. the RAJA OF PANAGAL :—" Sir, I move that the Bill be passed into law."

The hon. Rao Bahadur Sir A. P. PATRO :—" I second it."

The motion was put and carried and the Bill was passed into law.

VII

THE MADRAS NURSES AND MIDWIVES BILL.

* The hon. Mr. C. P. RAMASWAMI AYYAR :—" On the last occasion when I moved this Bill I made it clear that though, under the rules as they exist at present, I had to move it on the Reserved side of the Government, yet the subject matter itself belonged to my hon. Colleague the Chief Minister who is Minister for Local Self-Government and Medical Administration. He has received representations—and some of those representations were repeated to me by virtue of the fact that I am moving this Bill—and they are to the effect that there are certain defects attendant upon the Bill in its present form and that they have to be very carefully considered. In view of that statement Government have been advised not to move it and they will crave permission to move it later on if and when they are advised to do so."

The motion was accordingly not made and was therefore deemed to have been withdrawn.

VIII

PROGRAMME OF BUSINESS DURING THE REMAINING DAYS OF THE SITTING.

* The hon. the PRESIDENT :—" I think the report of the Select Committee on the Civil Courts Bill will be presented to-morrow and the Bill will be considered."

* The hon. Mr. C. P. RAMASWAMI AYYAR :—" I take it that according to the terms of the motion of Mr. Ramalinga Chettiyar it will be ready by to-morrow evening. We hope to present it to-morrow and it is much better not to have any confusion about it. But perhaps in view of the non-official business, the Civil Courts Bill may come up the day after to-morrow if that will suit hon. Members."